



Montana Legislative Services Division
Office of the Code Commissioner

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RE: Senate Bill 329 (2011) Codification Correction

To whom it may concern:

The purpose of this letter is to inform you of an issue that arose when Senate Bill 329 (SB 329) from the 2011 Legislative Session was codified in the Montana Code Annotated (MCA) and to further inform you of two statutory changes in the MCA that should be disregarded. SB 329 was one of the main K-12 education bills that was enacted by the Legislature.

History and Background

As you may know, the Office of the Code Commissioner is required by law to prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section. § 1-11-204, MCA. As part of the codification process there are sometimes differences between the published version of the statute and the official enrolled bill passed by the Legislature. These differences typically occur when a section of law has been amended by multiple bills and all the language is combined into one section. Consequently the Legislature has given our office the ability to change the language of the law without changing its substance or intent. *See Mktg. Specialists, Inc. v. Serv. Mktg. of Mont., Inc.*, 214 Mont. 377, 693 P.2d 540 (1985).

As enacted, SB 329 created a "state school oil and natural gas impact account" in section 9 (codified as section 20-9-517, MCA) and provided for an immediate distribution of money to "affected high school districts and elementary school districts" in section 10 (codified as section 20-9-518, MCA). However, sections 9 and 10 are not effective until July 1, 2013. This created an issue during the codification process since section 7(6) (codified as section 20-9-104(6), MCA) and section 8(7) (codified as section 20-9-310(7), MCA) provided for allocations of money to accounts that are not yet in existence. Given this issue, our office made a code commissioner

correction to show that distributions are not made until the sections of law become effective on July 1, 2013. It was our opinion at the time that the changes were not substantive.

Enacted Version of Law Controlling -- Redaction of Code Commissioner Changes

After additional review, it appears that the code commissioner correction may have substantive implications. It should be noted that section 1-11-103(6), MCA, provides that in "case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect must be given to the official enrolled bill". As such, any inconsistencies should be resolved by giving effect to the actual text of SB 329 and not the text as codified.

To avoid potential substantive changes to the law, I hereby retract the code commissioner changes in section 7(6) (codified as section 20-9-104(6), MCA) and section 8(7) (codified as section 20-9-310(7), MCA), by striking the code commissioner language (interlined) and defaulting back to the language in SB 329 (underlined). These changes are reported as follows:

20-9-104. (Temporary) General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (7) and (8), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (7) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b) up to an amount not exceeding 15% of a school district's maximum general fund budget.

(5) For fiscal year 2012, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state to be deposited in the state general fund.

(6) Beginning ~~July 1~~, in fiscal year 2013, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited

in the guarantee account provided for in 20-9-622;

(b) 5% of the excess amount must be remitted to the state to be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the excess amount must be deposited in the county school oil and natural gas impact fund provided for in 20-9-518.

(7) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(8) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

(9) Prior to June 30, 2011, a school district may transfer any general fund money in excess of 15% of the fiscal year 2011 general fund budget that is not needed to fund the budget to any budgeted fund considered appropriate by the trustees. (Terminates June 30, 2016--sec. 29, Ch. 418, L. 2011.)

20-9-310. (Temporary) Oil and natural gas production taxes for school districts -- allocation and limits. (1) The maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section.

(4) For fiscal year 2012, any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) must be deposited in the guarantee account as provided in 20-9-622.

(5) Subject to the limitation in subsection (1), the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

(a) for fiscal year 2012, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(b) for fiscal year 2013, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 35% of the

total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(c) for fiscal year 2014, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 45% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(d) for each succeeding fiscal year, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 55% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(e) oil and natural gas production taxes received by the district must be deposited in the general fund until the budgeted amount is reached; and

(f) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

(7) Beginning ~~July 1~~, in fiscal year 2013, for any amount retained by the department of revenue in compliance with the limitation in subsection (1), the amount retained must be allocated as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

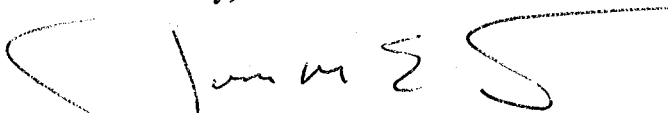
(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518. (Terminates June 30, 2016--sec. 29, Ch. 418, L. 2011.)

History: En. Sec. 8, Ch. 418, L. 2011.

I apologize for any inconvenience that may have been caused by the code commissioner correction, and I hope the above redaction provides at least some clarity. That being said, please note that I do not have the authority to interpret SB 329 or provide advice on how SB 329 is to be executed. Please feel free to contact me with any questions or concerns regarding the codification process.

Sincerely,



Todd Everts
Code Commissioner

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